

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

RECEIVED
2007 DEC 27 P 4:45

BRASFIELD & GORRIE, LLC,)

Plaintiff,)

v.)

RUSSELL COUNTY COMMUNITY)

HOSPITAL, LLC, et al.,)

Defendants.)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No.: 3:07cv1130-CSC

NOTICE OF REMOVAL

Defendant Alphonso Jackson in his official capacity as Secretary of HUD, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, respectfully petitions for removal of this action from the Circuit Court of Russell County, Alabama, to the United States District Court for this District, and in support thereof, represent the following:

1. That Defendant, Jackson, is a named Defendant in the above-captioned civil action which is pending in the Circuit Court of Russell County, Alabama, Civil Action No. CV-07-309. Copies of all process, pleadings, and orders served upon Defendants in such action are attached hereto.

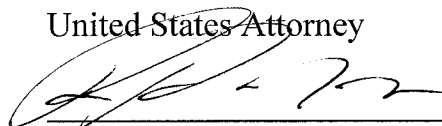
2. That the above-captioned action is one which may be removed without bond to this court pursuant to 28 U.S.C. §§ 1442(a)(1), 1444, and 2410(a), for the reasons that Defendant Jackson is a federal official being sued in his official capacity for an act taken under color of his office and that this lawsuit affects property on which the United

States has a security interest.

WHEREFORE, Petitioner prays that said action be removed from the Circuit Court of Russell County, Alabama.

DATED this 27th day of December, 2007.

LEURA G. CANARY
United States Attorney

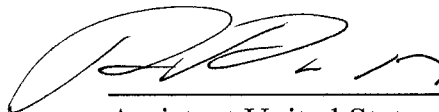


R. RANDOLPH NEELEY
Assistant United States Attorney
Bar Number: 9083-E56R
Post Office Box 197
Montgomery, AL 36101-0197
Telephone No.: (334) 223-7280
Facsimile No.: (334) 223-7418
E-mail: Rand.Neeley@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2007, I filed the foregoing with the Clerk of the Court, and I hereby certify that I have mailed, by United States Postal Service, a copy of same to the following:

Axel Bolvig
Bradley Arant Rose & White, LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119



Assistant United States Attorney

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

11/28/2007

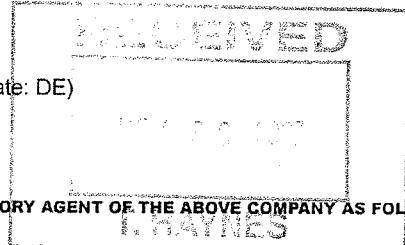
CT Log Number 512829578



TO: Christine Gillen
The Prudential Insurance Company of America
Legal Department, 751 Broad St, 4th Floor
Newark, NJ 07102

RE: Process Served in Alabama

FOR: Prudential Huntoon Paige Associates Ltd. (Domestic State: DE)



ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Brasfield & Gorrie, LLC, Pltf. vs. Russell County Community Hospital, LLC, et al. including Prudential Huntoon Paige Associates, Ltd., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit

COURT/AGENCY: Russell County Circuit Court, AL
Case # CV 07 309

NATURE OF ACTION: Monies Due and Owing - Services Rendered - Amount - \$590,778.47

ON WHOM PROCESS WAS SERVED: The Corporation Company, Montgomery, AL

DATE AND HOUR OF SERVICE: By Certified Mail on 11/28/2007 postmarked on 11/21/2007

APPEARANCE OR ANSWER DUE: Within 30 days

ATTORNEY(S) / SENDER(S): Axel Bolvig
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
205-521-8000

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 790882981008
Email Notification, Legal Process Unit legal.process.unit@prudential.com

SIGNED: The Corporation Company

ADDRESS: 2000 Interstate Park Drive
Suite 204
Montgomery, AL 36109

TELEPHONE: 334-387-7680

Page 1 of 1 / CH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AVSO300

ALABAMA JUDICIAL DATA CENTER
RUSSELL COUNTY

SUMMONS

CV 2007 000309.00
ALBERT L. JOHNSON

IN THE CIRCUIT COURT OF RUSSELL COUNTY

BRASFIELD & GORRIE, LLC VS RUSSELL COUNTY COMMUNITY HOSPITAL, LLC

SERVE ON: (D002)

PLAINTIFF'S ATTORNEY

PRUDENTIAL HUNTOON PAIGE ASSOC
THE CORPORATION COMPANY
2000 INTER PK DR STE 204
MONTGOMERY, AL 36109-0000BOLVIG AXEL III
BRADLEY ARANT ROSE WHITE
1819 FIFTH AVENUE, NORTH
BIRMINGHAM, AL 35203-2104

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

() TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

X) THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF Plaintiff PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 11/26/2007

CLERK: KATHY COULTER
PO BOX 518
PHENIX CITY AL 36868-0510
(334) 298-0516BY: 

RETURN ON SERVICE:

() CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) _____
(RETURN RECEIPT HERETO ATTACHED)

() I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO _____
IN _____ COUNTY, ALABAMA ON (DATE) _____

DATE _____

SERVER SIGNATURE _____

SERVER ADDRESS _____

TYPE OF PROCESS SERVER _____

OPERATOR: JBC
PREPARED: 11/26/2007

IN THE CIRCUIT COURT FOR RUSSELL COUNTY, ALABAMA

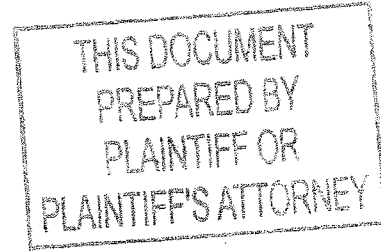
BRASFIELD & GORRIE, LLC)

Plaintiff,)

v.)

RUSSELL COUNTY COMMUNITY)
HOSPITAL, LLC; PRUDENTIAL)
HUNTOON PAIGE ASSOCIATES, LTD.;)
ALPHONSO JACKSON, in his Official)
Capacity as, SECRETARY OF THE)
UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT.)

Defendants.



CIVIL ACTION NUMBER:

00-07-309

FILED IN OFFICE
2007 NOV 21 PM 1:52
CLERK OF DIST. COURT
RUSSELL COUNTY, ALA.

COMPLAINT

For its complaint against Russell County Community Hospital, LLC ("Russell"), Prudential Huntoon Paige Associates, Ltd. ("Prudential"), and Alphonso Jackson ("Jackson"), in his official capacity as Secretary of the United States Department of Housing and Urban Development ("HUD"), Brasfield & Gorrie, LLC ("Brasfield & Gorrie"), states as follows:

1. Brasfield & Gorrie is limited liability company organized under the laws of the state of Delaware and registered to do business in Alabama.
2. Defendant Russell is an Alabama limited liability company having its principal place of business in Russell County, Alabama.
3. Prudential is a business entity organized under the laws of the state of Delaware and is authorized to do business in Alabama.

4. Jackson is the Secretary of HUD and is named as a defendant in this action in his official capacity as the head of HUD. HUD is headquartered in Washington, DC and is an executive department of the Federal Government of the United States of America. As the head of HUD, Jackson directs, approves, and/or is responsible for all official actions at HUD.

5. Russell is the owner of the property upon which the Russell County Community Hospital, also known as Summit Hospital, (the "Hospital") is located.

6. Prudential provided funding to Russell for the construction of the Hospital and holds a mortgage on the Hospital and the property upon which the Hospital is located.

7. Jackson holds a security interest in the Hospital and the land upon which the Hospital is situated by virtue of federal participating funds or loan guarantees.

8. The Hospital is located in Russell County, Alabama, and a legal description of the property upon which the Hospital is located is provided in Exhibit "A" to Exhibit "1" which is attached hereto and incorporated herein by reference.

9. On March 22, 2005, Brasfield & Gorrie entered into a Construction Agreement (the "Agreement") with Russell to provide construction services for construction of the Hospital.

10. Through the course of construction, Brasfield & Gorrie invoiced Russell for the amounts due pursuant to the Agreement. Russell paid Brasfield & Gorrie for a portion of the services provided, but an amount of \$590,778.47, plus interest, remains outstanding and due to be paid to Brasfield & Gorrie.

COUNT I- Breach of Contract

11. Brasfield & Gorrie incorporates the allegations contained in the preceding paragraphs, and further alleges that:

12. Brasfield & Gorrie entered into the Agreement with Russell to provide construction services for construction of the Hospital.

13. Brasfield & Gorrie has fulfilled all of its obligations and complied with all conditions precedent under the Agreement. Any obligations not performed or conditions precedent not complied with have been waived, excused or made impossible by Russell.

14. Brasfield & Gorrie has invoiced Russell for its work on the Hospital. Russell has paid Brasfield & Gorrie for a portion of its work, but an amount of \$590,778.47 remains outstanding and due to be paid to Brasfield & Gorrie.

15. Russell breached the Agreement by failing to make payment in the amount of \$590,778.47 to Brasfield & Gorrie, as required by the Agreement.

WHEREFORE, Brasfield & Gorrie demands judgment against Russell in an amount not less than \$590,778.47, plus interest, attorneys' fees, and costs, and such other, further and different relief at law, in equity or otherwise as may be just and proper.

COUNT II – Mechanic's Lien

16. Brasfield & Gorrie incorporates the allegations contained in the preceding paragraphs, and further alleges that:

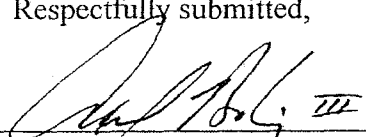
17. On October 5, 2007, Brasfield & Gorrie filed in the Office of Probate Judge of Russell County a Verified Statement of Lien against the Hospital and the property on which the Hospital is located, in complete accordance with the requirements of the Alabama mechanic's lien statute, Alabama Code § 35-11-210, et seq. A true and correct copy of Brasfield & Gorrie's Verified Statement of Lien is attached hereto as Exhibit "1".

18. All requirements and conditions to perfection of said lien have been satisfied.

19. Brasfield & Gorrie is entitled to an order perfecting its mechanic's lien on the subject property and directing that the property be sold in satisfaction of the amounts owed it.

WHEREFORE, Brasfield & Gorrie requests that this Court enter an Order perfecting Brasfield & Gorrie's mechanic's lien on the property, ordering that the property be sold in satisfaction of the amounts owed to Brasfield & Gorrie, and granting such other, further and different relief at law, in equity or otherwise as may be just and proper.

Respectfully submitted,



Axel Bolvig (BOL023)
Edward J. Everitt (EVE011)
Attorneys for Plaintiff
Brasfield & Gorrie, LLC

OF COUNSEL:

BRADLEY ARANT ROSE & WHITE LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2119
Telephone: (205) 521-8000
Facsimile: (205) 521-8800

PLAINTIFF'S ADDRESS:

Brasfield & Gorrie, LLC
3021 7th Avenue South
Birmingham, AL 35233

DEFENDANTS TO BE SERVED BY CERTIFIED MAIL AT:

Russell County Community Hospital, LLC
c/o Registered Agent
CSC-Lawyers Incorporating SVC, Inc.
150 S. Perry Street
Montgomery, AL 36104

Prudential Huntoon Paige Associates, Ltd.
c/o Registered Agent
The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, AL 36109

Alphonso Jackson, in his Official Capacity as,
Secretary of the United States Department of Housing and Urban Development
c/o The Associate General Counsel for Litigation
Office of Litigation - Room 10258
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Alphonso Jackson, in his Official Capacity as,
Secretary of the United States Department of Housing and Urban Development
c/o Leura G. Canary
United States Attorney for the Middle District of Alabama
131 Clayton Street
Montgomery, Alabama 36104

Alphonso Jackson, in his Official Capacity as,
Secretary of the United States Department of Housing and Urban Development
c/o United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

STATEMENT OF LIEN

STATE OF ALABAMA)
JEFFERSON COUNTY)

BRASFIELD & GORRIE, LLC files this statement in writing, verified by the oath of Alan Anthony, its Vice President, Medical Division Manager, who has personal knowledge of the facts herein set forth:

That said BRASFIELD & GORRIE, LLC claims a lien upon following real property, situated in Phenix City, Russell County, Alabama, to wit:

Summit Hospital
4401 Riverchase Drive
Phenix City, Alabama 36867

the legal description of which may be found in the Office of Judge of Probate, Russell County, at Deed Vol. 1026, Page 155, a copy of which is attached hereto as Exhibit A.

This lien is claimed, separately and severally, as to the land, buildings and improvements thereon to the extent of the entire lot or parcel which is contained within a city or town. If said land is not within a city or town, this lien is claimed, separately and severally, as to the buildings and improvements located on the above-described real property, plus one acre of land surrounding and contiguous thereto.

That said lien is claimed to secure an indebtedness, after all just credits have been given, of \$590,778.47 with interest from 29 day of May, 2007, for work performed in connection with the construction of Summit Hospital.

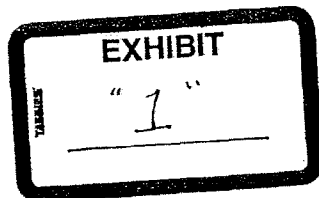
The name of the owner or proprietor of the said property is Russell County Community Hospital, LLC. The work was performed by BRASFIELD & GORRIE, LLC for Russell County Community Hospital, LLC pursuant to a contract dated March 22, 2005.

By: _____

Alan Anthony

Its: Vice President, Medical Division Manager

Date: October 4, 2007



BRASFIELD & GORRIE, LLC

STATE OF ALA.
RUSSELL CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON
JUDGE 00066 PG 0326-0328 2007 Oct 05
11:32AM
Afford M. Harden Jr.
JUDGE OF PROBATE
INDEX
REC. FEE \$9.00
CERT. \$0.00
CASH TOTAL \$14.00
12080 Clerk: JANITA 11:32AM

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

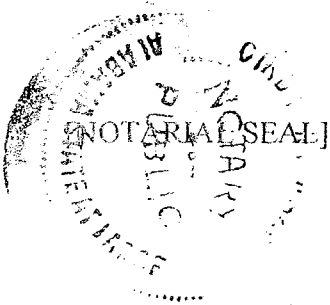
I, the undersigned, a notary public in and for said county in said state, hereby certify that Alan Anthony, whose name as Vice President, Medical Division Manager of Brasfield & Gorrie, LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, with full authority, executed the same voluntarily for and as the act of Brasfield & Gorrie, LLC.

Given under my hand and official seal this 4th day of October, 2007.

Cindy M. Maze

Notary Public
Cindy M. Maze

My commission expires: 4-07-10



DEED vol 1026 pg 155

EXHIBIT A

Deed Description

Phenix City Land, LLC Property
Portion of North Half of the SE ¼ of the SE ¼ of Section 34, T18N, R30E &
Portion of North Half of the SW ¼ of the SW ¼ of Section 35, T18N, R30E
4401 River Chase Drive, Phenix City, Russell County, Alabama
All of Deed Book 989, Page 71
Office of the Judge of Probate of Russell County, Alabama

Being a certain tract or parcel of land lying in the North Half of the SE ¼ of the SE ¼ of Section 34, T18N, R30E and lying in the North Half of the SW ¼ of the SW ¼ of Section 35, T18N, R30E and being more particularly described as follows:

Beginning on a 5/8" rebar set with cap #24547 (State Plane Coordinates: N 732122.712, E 910862.807) in the southwest right-of-way of Fifth Avenue (ROW varies), said point being located N 52°01'34" E 2241.35' from the NW corner of the SE ¼ of the SE ¼ of Section 34, T18N, R30E and being the southeast corner of the lands of Georgia Power (1907/2006) and the northernmost corner of the property described herein; thence, leaving the lands of Georgia Power and running with the southwest right-of-way of Fifth Avenue for two (2) calls as follows: S 44°03'08" E 257.63' to a concrete right-of-way monument found; thence, S 54°27'43" E 206.22' to a concrete right-of-way monument found at the beginning of a curve (Radius = 1420.00'; Delta = 02°03'38") to the right; thence, continuing with said right-of-way a chord bearing and distance of S 35°10'31" E 51.06' to a 5/8" rebar set with cap #24547 (State Plane Coordinates: N 731775.948, E 911239.166) in said right-of-way, said point being a corner with the lands of Girard Partners, LP (811/2005) and the easternmost corner of the property described herein; thence, leaving said right-of-way and running with the lands of Girard Partners, LP for four (4) calls as follows: S 51°14'05" W 1341.77' to a 5/8" rebar set with cap #24547; S 89°54'23" W 108.99' to a 5/8" rebar set with cap #24547; N 38°48'23" W 436.96' to a 5/8" rebar set with cap #24547; thence, N 51°11'37" E 1350.84' to the point of beginning and containing 16.005 acres by survey. Actual field survey performed by James E. Helton, Helton & Associates, P. O. Box 2533, Cookeville, Tennessee 38502 on August 4, 2003.

Being the same property as conveyed to Phenix City Land, LLC from Girard Partners, LP as of record in Book 989, Page 71 of the Office of Probate Judge of Russell County, Phenix City, Alabama which is the previous and last conveyance.

Russell County Circuit Court
P.O. Box 518
Phenix City, AL 36868-0518



7007 1490 0004 0136 8516



**RETURN RECEIPT
REQUESTED**

Prudential Huntoon Paige Associates, Ltd.
c/o Registered Agent
The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, AL 36109